IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1390 OF 2006

Mangaldas N. Verma Charitable Trust ..Petitioner.
Vs.
Municipal Corporation of Greater Bombay
& Ors. ..Respondents.

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Mr. G.V. Murti for the Petitioner.
Mr. N.N. Shaikh for the BMC.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

8th March, 2007.

P.C. :

1. The Petitioners are owners of a property admeasuring 7,213.44 sq. mtrs. bearing C.S. No.215/74 of Parel Sewri Division. There are four structures situated on the property which are assessed to municipal taxes under Ward Nos. [a] FS/617(1), [b] FS/617(2), [c] FS/619(4A-4AA) and [d] FS/619(5). The first of the aforesaid structures is known as Herbertson Building, the second as Murphy Building, the third as Chika Building and the fourth as Bata Building. Prior to 1st January, 2004 the premises were assessed to property taxes and had a separate water connection from the municipal mains. Prior to October 2003 the Petitioners

are stated to have paid water charges and sewerage charges as and when bills were raised by the Municipal Corporation. The properties had a metered water connection. Since the structures had become dilapidated, the Petitioners applied for repair permission. Plans for repair were sanctioned and Intimations Of Disapproval (IODs)in respect of the three buildings were issued on 4th June, 2002, 6th April, 2002 and 17th April, 2003. One of the conditions in the IODs required the Petitioners to pay extra water and sewerage charges to the Assistant Engineer, Water Works of 'F' South Ward. On 3rd May, 2003 the Assistant Engineer required the Petitioners to furnish an undertaking that no municipal water would be used for construction purposes failing which extra water charges would be recovered. According to the Petitioners they have complied with the terms of the permission dated 3rd May, 2003. The water connections were disconnected during the period when construction was being carried out on 8th April, 2003, 3rd May, 2003 and 17th October, 2003. These connections were restored in April 2004 and January 2006. During the aforesaid period extra sewerage charges were paid by the Petitioners. The case of the Petitioners is that they had utilized tanker water during the work of construction. After the work was complete and completion

certificates were obtained, the ratable values of the properties were sought to be revised by the Corporation by issuing notices under Section 162 and Section 167 of the Mumbai Municipal Corporation Act, 1888. After the complaints were disposed of, the Petitioners filed Municipal Appeals before the Small Causes Court under Section 217 of the Act and the appeals are pending.

2. Property tax bills were issued to the Petitioners for each of the three buildings, demanding water tax and sewerage tax. According to the Petitioners water and sewerage tax was levied for the period during which there was no water connection, either metered or unmetered to the properties. The bills, according to the Petitioners correspond to the period when the water connection had been disconnected. After the completion certificates were issued the Petitioners made applications for the reconnection of water. The water connection for Herbertson and Chika Buildings were restored on 7th April, 2004 while the water connection for Murphy Building was restored on 14th January, 2006. The Petitioners submitted a representation dated 23rd August, 2004 in response to which they were informed by the Assistant Assessor and Collector of the deletion of sewerage tax from the property tax

bills for the relevant period.

3. The submission which has been urged in support of the Petition is that the Petitioners have not used, consumed or utilized any municipal water while the work of repair was going on and consequently there was no occasion for the Municipal Corporation to levy water tax. The Municipal Corporation, it is urged, had called upon the Petitioners to desist from using municipal water for the work of construction. Consequently, it was submitted that no water tax could be levied. The answer to the submission which has been urged on behalf of the Petitioners is to be found in the statutory provisions contained in the Mumbai Municipal Corporation Act, 1888. Section 140 of the Act postulates the levy on buildings and lands in Brihan Mumbai of property taxes. Clause (a)(i) of Sub section (1) contemplates a water tax of a percentage of the rateable value. Section 141 then provides that the water tax shall be levied in respect of the following premises viz. (a) premises to which a private water supply is furnished from or which are connected by means of communication pipes with any municipal water works; or (b) which are situated in a portion of Brihan Mumbai in which the Commissioner has given public notice that

sufficient water is available from the municipal water works for furnishing a reasonable supply to all the premises in the said portion. Sub section (1) of Section 169 empowers the Standing Committee to make rules for the supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the Corporation. Under clauses (i) to (iv) of sub section (1) of Section 169 the rules can determine;

> "(i) the charges for the supply of water by a water tax and a water benefit tax levied under Section 140 of a percentage of the rateable value of any property provided with a supply of water; or
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> (ii) a water charge in lieu of a water tax, based on a measurement or estimated measurement of the quantity of water supplied; or
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> (iii) combined charges under clauses (i) and (ii); or
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> (iv) a compounded charge in lieu of charges under clauses (i) and (ii)."

4. Sub section (2) of Section 169 provides that a person who is charged for the supply of water under Clause (ii or (iv) of sub section (1) shall not be liable for the payment of water tax. Section 279 of the Act empowers the Municipal Commissioner to cut off the connection between any municipal water work and

premises to which a private water supply is furnished in certain specified eventualities or default.

5. These provisions establish that the water tax is part of the property taxes which are levied by the Municipal Corporation under the charging provisions contained in sub section (1) of Section 140. By Section 141 the levy of the water tax is effected on premises to which a private water supply is furnished from or which are connected by pipes to a municipal water work and upon those premises which are situated in a portion of Brihan Mumbai in which the Municipal Commissioner has given public notice that a sufficient quantity of water is available from the municipal water works for furnishing a reasonable supply to all the premises in the said portion. Once a notice has been furnished by the Municipal Commissioner as contemplated in Clause (b) of sub section (1) of Section 141, the liability to pay water tax arises since the charging provision is attracted. Indeed, the liability to pay water tax would subsist even if supply has been disconnected under Section 279. This was laid down in a judgment of a Learned Single Judge of this Court in **Municipal Corporation of Bombay v. Akbarali Jafarali**

Iilrji[1]. The judgment was recently affirmed as laying down the correct position in law in a judgment of the Division Bench dated 19th December, 2002 in **The Wallace Flour Mills Co. Ltd. v. Municipal Corporation of Greater Mumbai** (Writ Petition 514 of 2002). The Division Bench held as follows :

> "From the aforesaid provisions it would be clear that if water supply has been provided by the Corporation, it is upto the Commissioner either to levy charges for water supply as prescribed by the Standing Committee or to levy water tax. It is not open to the Commissioner under law to levy water tax as well as water charges. However, if there is no water supply, or in a case water supply has been disconnected, the levy of water tax being part of property tax cannot be faulted."

The judgment of the Division Bench is, however, sought to be distinguished on the ground that in the present case there was no disconnection of water supply on account of default on the part of the Petitioners as contemplated in Section 279 and it was the Assistant Engineer of the Municipal Corporation who had called upon the Petitioners to desist from using municipal water during the period when the construction was in progress. That, however, in my view, will make no difference to the levy that is effected by the statutory provisions contained in Sections 140 and 141 of the Act.

1 1936 BLR 990.

The water tax is an integral part of the property taxes under Section 140. So long as the premises are situated in a portion of the city in which the Municipal Commissioner has furnished a public notice of the nature referred to in clause (b) of sub section (1) of Section141, it would make little difference to the liability to pay water tax, whether or not the municipal water supply is actually availed of. The actual availment of the services is not a condition precedent to attract the levy of a water tax and it is sufficient if the Municipal Commissioner has notified by means of a public notice that a sufficient quantity of water is available from the municipal water works for furnishing a reasonable supply to all the premises in the portion. If in a given case, the Municipal Commissioner or one of his officers is of the view that during the work of construction, an additional burden should not be placed on the municipal water supply, that would not obviate any exception to the liability to pay water taxes. The liability once attracted continues to subsist. However, as spelt out in Section 169, where a water charge is levied based on the measurement or estimated measurement of the quantity of water supplied, in such a case under sub section (2) the person shall not be liable for the payment of water tax. This has also been noted in the judgment of the

Division Bench. For all these reasons, it is not possible to accede to the submission of the Petitioners. The Petitioners would be liable to pay water taxes even during the period when the work of construction was being carried out. However, there can be no dispute about the position in law that once water charges have been levied after the work of construction was complete and a regular water connection was reconnected by the Municipal Corporation, the liability of the Petitioners would ceased to subsist once water charges have been levied on the basis of actual measurement. While disposing of this Petition it is also clarified that since the Municipal Appeals filed against the determination of rateable value are pending before the Small Causes Court, any modification in the rateable value would be duly taken into account by the Municipal Corporation, in giving such credit if any as may be occasioned in the levy of the water taxes for the relevant period. The Petition is accordingly disposed of. There shall be no order as to costs.